IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 24450 of 2007(I)

PETITIONERS:

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1. N.I. PAULOSE, S/O. ISSAC,
   BRANCH MANAGER-IN-CHARGE, KALLOOR BRANCH,
   THE SULTHAN BATHERY SERVICE CO-OPERATIVE BANK LTD.
   SULTHAN BATHERY, WAYANAD DISTRICT.

2. N.V. PATHROSE, S/O. VARGHESE,
   BRANCH MANAGER-IN-CHARGE, H.O. BRANCH,
   THE SULTHAN BATHERY SERVICE CO-OPERATIVE BANK LTD.
   SULTHAN BATHERY, WAYANAD DISTRICT.

3. K. SASIDHARAN, S/O. KRISHNAN NAIR,
   BRANCH MANAGER-IN-CHARGE, POOMALA BRANCH,
   THE SULTHAN BATHERY SERVICE CO-OPERATIVE BANK LTD.
   SULTHAN BATHERY, WAYANAD DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS:

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1. STATE OF KERALA,
   REPRESENTED BY SECRETARY, DEPARTMENT OF
   CO-OPERATION, SECRETARIAT, THIRUVANANTHAPURAM.

2. REGISTRAR OF CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM.

3. THE SULTHAN BATHERY SERVICE CO-OPERATIVE
   BANK LTD., SULTHAN BATHERY, WAYANAD DISTRICT
   REP.BY ITS SECRETARY.

BY GOVT. PLEADER SMT. ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No. 24450of 2007

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Dated this the 20th day of August, 2007

JUDGMENT

Case of the petitioners in brief is as follows:

Graduation is a necessary qualification for promotion to the category of Branch Manager. Petitioners are employed in the category of Head Clerk/Accountant under the third respondent Society. It is their case that as per SRO.869/2005 five years experience in the feeder category was prescribed. Under Rule 185(8) the Director Board can relax the qualification with the previous approval of the Registrar. It is stated that the Director Board has by resolution dated 6.12.2006 resolved to promote the petitioners and to apply to the Government for approval of the exemption of the qualification. The applications for approval were sent on 22.12.2006. No action is taken. Petitioners filed W.P.(C) 12904 of 2007, which was disposed of directing the Registrar of Co-operative Societies to consider and take a decision. Hearing was posted on 30.5.2007 and when the hearing was going on, it was informed by the concerned Section that a decision has been taken as

early as on 10.5.2007 rejecting the application for exemption and the same has been communicated to the Joint Registrar (General), Wayanad. It is stated that the Joint Registrar issued orders rejecting the exemption application and Exts.P17, P18 and P19 appeals have been filed before the Government and the same are pending.

2. I heard learned counsel for the petitioner and the learned Government Pleader.

3. The power to grant exemption from the qualification prescribed is vested with the Registrar under Rule 185(8). Rule 185(8) Clause (b) inter alia provides as follows:

> "Rule 185(8)(b) :- Where the academic qualification prescribed is graduation and above, exemption from acquiring the said qualification may be considered if the incumbent satisfied the following conditions, namely:-
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> (i) should have passed JDC or equivalent;
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> (ii) should have a minimum service of five years in the feeder category; and
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> (iii) should not be less than forty-five years of age."

The power is vested, after 3.9.2005, with the Registrar of Co-operative Societies to relax the qualification. Earlier the Board of Directors can

relax the qualification with the previous approval of the Registrar. Apparently the petitioners' case is based on the provisions as was extant on 2.9.2005. But here the resolution itself was taken on a day after the amendment, namely on 6.12.2006. In such circumstances the power if at all can be exercised only in accordance with sub rule 8(b) extracted herein before. The said power can be exercised by the Registrar only after the conditions therein are satisfied. It is not in dispute that the petitioners do not have minimum service of five years in the feeder category. If that be so, there is no power with the Registrar. Then the only power which exists is under Rule 181 to exempt, which is a power to exempt from the rules itself. That is a power which is lodged with the Government. In such circumstances, the Registrar would not have power in the matter to grant any exemption. The learned Government Pleader on instructions submits that Government only directed that exemption need not be considered at present. She submits that if there is an application by the Society, an appropriate decision in accordance with law will be taken thereon.

In such circumstances, the writ petition is disposed of directing

that if the Society has moved any application for exemption before the first respondent, a decision thereon in accordance with law will be taken with opportunity of hearing to the Society within two months from the date of receipt of a copy of this judgment. If an application has not already been moved before the Government, and if an application is made by the respondent Society in regard to the matter in issue before the Government, a decision as aforesaid in accordance with law will be taken with opportunity of hearing to the respondent Society within two months from the date of receipt of such a request.

(K.M. JOSEPH, JUDGE)

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